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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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No. 745

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GABRIELE GIORDANO,

*Petitioner,*

*vs.*

THE ASBURY PARK AND OCEAN GROVE BANK,  
ET AL.

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PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF ERRORS AND APPEALS OF THE STATE  
OF NEW JERSEY AND BRIEF IN SUPPORT  
THEREOF.

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HERBERT J. KENARIK,  
*Counsel for Petitioner.*



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GABRIELE GIORDANO,

*Petitioner,*

*vs.*

THE ASBURY PARK AND OCEAN GROVE BANK,  
BODY CORPORATE; HARRY N. JOHNSON, FORMER  
SHERIFF OF MONMOUTH COUNTY; THEODORE ROWE,  
LOUIS STRADA, AND WILLIAM R. O'BRIEN, SHERIFF  
OF MONMOUTH COUNTY,

*Respondents.*

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**PETITION FOR CERTIORARI**

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*May It Please the Court:*

The petition of Gabriele Giordano, respectfully shows to  
this Honorable Court:

A

**Summary Statement of the Matter Involved**

The petitioner was the owner of a considerable amount  
of improved real estate in Asbury Park, New Jersey, con-  
sisting of six (6) separate parcels containing or having

erected thereon four (4) separate two-story dwellings and a three-car garage. The properties were fully rented and produced about \$2200. per year in rents.

The petitioner claimed that the properties were worth at least \$35,000. The respondents admitted that the properties were worth at least \$15,000. to \$16,000. The encumbrances on the various properties did not total more than about \$7000. or \$8000.

The respondent bank held a judgment against the petitioner in the sum of approximately \$350. and sold all the properties of the petitioner, in bulk, to the respondent bank for \$100.00.

During part of the period while the proceedings herein were pending, the petitioner alleged that he was confined to a mental institution by the local police under instructions of one of the attorneys for the respondent bank which allegation was never denied.

The petitioner filed a bill of complaint in the Court of Chancery of New Jersey to set aside the Sheriff's Sale. The Chancellor filed an opinion (R. 96), in which he held that the sale price was unconscionable, but by reason of the petitioner's delay, precluded him from any relief and dismissed the bill. The petitioner thereupon appealed from the decree to the Court of Errors and Appeals, the highest Appellate Court in New Jersey, which affirmed the decree below by an opinion reported in 135 N. J. Equity, page 511, decided October 16th, 1944.

No remittitur or decree was entered upon that opinion by the respondents until October 16th, 1945, at which time, a remittitur was entered which affirmed the original decree and also denied a petition for reargument which was filed on September 28th, 1945 (R. 140).

At the trial of the main bill of complaint in the Court of Chancery, the petitioner testified to an oral opinion by Chancellor Walker to one of the solicitors for the re-

spondents, advising him not to sell all the property, but only a small parcel large enough to satisfy the judgment (R. 56, 57).

A petition was filed with the Chancellor applying for a rehearing, reargument and for relief on the ground that petitioner's properties should not have been sold in bulk but should have been sold only in parcels, and only so much thereof sold as was necessary in order to satisfy the execution should have been sold and that the failure to do so deprived the petitioner of his properties without due process of law (R. 133).

That Court considered and decided adversely to the petitioner the contention that the petitioner's properties should not have been sold in bulk but should have been sold only in parcels and only so much thereof as was necessary in order to satisfy the execution, thus denying to petitioner the due process of law guaranteed by the 14th Amendment of the Federal Constitution.

The claim of a constitutional right to have his properties sold only in parcels and not in bulk and only to have so much thereof sold as would satisfy the execution was raised before the Court of Errors and Appeals in the petition for rehearing, reargument and for relief, which was filed before the remittitur was entered (R. 119).

This point was therefore raised by the petitioner at the original trial (R. 56, 57); on the application for reargument before the Court of Chancery (R. 133) and on the application for rehearing, reargument and for relief in the Court of Errors and Appeals (R. 119).

## B

### **Reasons Relied Upon for the Allowance of the Writ**

1. The New Jersey Court of Errors and Appeals has decided federal questions of substance in a way probably

not in accord with applicable decisions of this Court and has decided those questions in deprivation of petitioner's constitutional rights as follows:

(a) It has decided as against the claim of constitutional right under the Fourteenth Amendment that the petitioner was accorded due process within the meaning of the Fourteenth Amendment.

(b) It has decided as against a claim of constitutional right under the Fourteenth Amendment that a sale, in bulk, of several parcels of property having a value far in excess of the amount of the judgment, can be sold, in bulk, rather than in parcels and that more than sufficient to pay that judgment can be thus sold in the absence of any show of evidence on the reason or necessity therefor.

### C

### **Prayer for Writ**

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Errors and Appeals of the State of New Jersey, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case entitled on its docket for the May Term of 1944, Between Gabriele Giordano, Complainant-Appellant, and The Asbury Park and Ocean Grove Bank, Body Corporate, Harry N. Johnson, former Sheriff of Monmouth County, Theodore Rowe, Louis Strada and William R. O'Brien, Sheriff of Monmouth County, Defendants-Appellees; that said decree of said Court of Errors and Appeals be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this



Honorable Court may seem just and proper; and your petitioner will ever pray.

All of which is respectfully submitted this 11th day of January, 1946.

GABRIELE GIORDANO,  
By HERBERT J. KENARIK,  
*Attorney.*